

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

CHRISTOPHER L. SCRUGGS,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 3:17-CV-467 PS
)	
SGT. MILLER, <i>et al.</i> ,)	
)	
Defendants.)	

OPINION AND ORDER

Christopher L. Scruggs, a *pro se* prisoner, filed a motion (ECF 28) to amend the March 19, 2018, screening order. In the screening order, I gave Scruggs leave to proceed on an Eighth Amendment claim that Sgt. Miller and Sgt. SinClair used excessive force when they attacked him on November 14, 2016, because they were upset that he complained about Sgt. Miller's handling of food at the prison. ECF 10. Scruggs now asks that I amend the screening order to also allow him to proceed on a First Amendment claim based on that same set of facts. He points out that these two officers beat him in retaliation for his speaking out about Sgt. Miller's handling of food.

"To prevail on his First Amendment retaliation claim, [Scruggs] must show that (1) he engaged in activity protected by the First Amendment; (2) he suffered a deprivation that would likely deter First Amendment activity in the future; and (3) the First Amendment activity was at least a motivating factor in the Defendants' decision to take the retaliatory action." *Gomez v. Randle*, 680 F.3d 859, 866 (7th Cir. 2012) (quotation

marks and citations omitted).

Here, Scruggs' complaints about food safety conditions at the prison, if true, could constitute protected speech. Based on the allegations contained in the complaint, these defendants made the decision to beat him based on his protected speech. Though further fact finding may ultimately reveal otherwise, Scruggs has adequately plead an independent claim of retaliation.

Accordingly:

(1) the motion to reconsider (ECF 28) is GRANTED; and

(2) Scruggs is FURTHER GRANTED leave to proceed on a claim against Sgt. Miller and Sgt. SinClair in their individual capacities for compensatory and punitive damages for retaliating against him by assaulting him on November 14, 2016, for his complaining about the food safety conditions of the jail, in violation of the First Amendment.

SO ORDERED on July 12, 2018

/s/ Philip P. Simon
JUDGE
UNITED STATES DISTRICT COURT